

so that the Taos Pueblo will receive the land that they deserve.

24TH ANNUAL ADIRONDACK
BALLOON FESTIVAL

HON. GERALD B. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 2, 1996

Mr. SOLOMON. Mr. Speaker, I would like to call the Nation's attention to one of the world's most important outdoor events. I am extremely proud to announce that the 24th Annual Adirondack Balloon Festival was again held this autumn in my hometown, beautiful Glens Falls, NY. It is the largest, best-known event of its kind in the entire United States.

Originally held in Queensbury, for the past 20 years the festival's home has been the industrial park adjacent to the Warren County airport. As they have for the past quarter century, balloonists from all over the globe will participate in this world-class event.

The Adirondack Balloon Festival was the brainchild of public relations man Walter W. Grishkot of Glens Falls. He wanted to attract visitors to the scenic region in upstate New York. It was a stroke of brilliance: Each year, over 100,000 spectators flock to the region to see the balloons and a variety of other entertainment. Mr. Grishkot has provided a fall getaway to the historic Adirondack region for millions of folks over the years and in doing so has spurred the tourist industry for his friends and neighbors in the community.

Mr. Speaker, I would like to commend Walt Grishkot for his great idea and welcome everyone to come up to Glens Falls, NY, for the Adirondack Balloon Festival, which still does not charge admission.

THE PRODUCTION FLEXIBILITY
CONTRACT IN THE AGRICUL-
TURAL MARKET TRANSITION
(FREEDOM TO FARM) ACT IS A
BINDING GUARANTEE ON THE
PART OF THE UNITED STATES

HON. PAT ROBERTS

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 2, 1996

Mr. ROBERTS. Mr. Speaker, as the 104th Congress nears adjournment today, it is a proper time to review the changes that have been made in farm programs under the Agricultural Market Transition Act [AMTA]—I refer to it as freedom to farm—and what farmers and producers can expect, during the 1996 through 2002 period, in the way of guaranteed fixed, albeit declining, payments on their production flexibility contracts with the Federal Government—the Commodity Credit Corporation.

Nearly all U.S. farmers and producers have signed up for the production flexibility contract with the U.S.D.A. Consolidated Farm Service Agency, and from all reports I believe it is widely endorsed by farmers, consumers, rural communities, and rural credit providers, and many others. It reverses 60 years of over-regulation of farmers and producers by the Federal Government and gives them the flexibility

to apply good financial management practices and good environmental management practices on their farms.

The reason that I make this statement today is to provide some legislative history and background for those farmers who have signed a contract with the U.S.D.A. Commodity Credit Corporation and may be aware that President Clinton released a statement on April 4, 1996, when he signed the Federal Agriculture Improvement and Reform [FAIR] Act of 1996 (Public Law 104-127) claiming he planned to submit legislation in 1997 to amend the FAIR Act.

I will review the provisions of the enactment of the Freedom to Farm Act (Public Law 104-127), its legislative history, and analyze a recent and relevant Supreme Court decision that sets forth standards for Federal Government liability under similar contracts.

Title I of the Agricultural Market Transition Act (Public Law 104-127, 110 Stat. 896, April 4, 1996) states in section 101(b), as noted in pertinent part below, part of the purpose of the act:

(b) PURPOSE.—It is the purposes of this title—

(1) to authorize the use of binding production flexibility contracts between the United States and agricultural producers to support farming certainty and flexibility while ensuring continued compliance with farm conservation and wetland protection requirements;

The conference report (H. Rept. 104-494, dated March 25, 1996) explains the origin of the language in section 101(b) quoted above and adoption of the House provision by the conferees:

SUBTITLE A—PURPOSE AND DEFINITIONS

“(2) Purpose

The House bill states that it is the purpose of this title to authorize the use of binding production flexibility contracts between the United States and producers; to make recourse marketing assistance loans; to improve the operation of the peanut and sugar programs and; to terminate price support authority under the Agricultural Act of 1949. (Section 101)

The Senate amendment has no comparable provision.

The Conference substitute adopts the House provision with an amendment deleting the reference to the Agriculture Act of 1949 and adding a reference to the establishment of the Commission on 21st Century Production Agriculture. (Section 101).

When the farm bill (later to become Public Law 104-127) was debated on the House floor an inquiry was made about the contractual aspects of production flexibility contract. (See 142 CONGRESSIONAL RECORD, H1539 daily ed. Feb. 29, 1996, (statement of Rep. ROBERTS)):

Let me first say that it is clearly the intent of Congress that the market transition payment provided by the 7-year production flexibility contract is an express and unmistakable contract between the United States and the owner and operator of farmland. Because the market transition payment is based on the 7-year contract it is the intent of the legislation that the payment is guaranteed.

When the conference report was taken up on the House floor, the production flexibility contract was explained as follows (See 142 CONGRESSIONAL RECORD, H3141 daily ed. Mar. 28, 1996, (statement of Rep. ROBERTS)):

The guarantee of a fixed (albeit declining) payment for seven years will provide the pre-

dictability that farmers have wanted and provide certainty to creditors as a basis for lending. The current situation in wheat, corn and cotton under which prices are very high, but large numbers of producers have lost their crops to weather or pests would be corrected by FFA. Those producers last year could not access the high prices without crops, and instead of getting help when they need it most, the old system cuts off their deficiency payments and even demands that they repay advance deficiency payments. FFA insures that whatever government financial assistance is available will be delivered, regardless of the circumstances, because the producer signs a binding contract with the Federal government for the next seven years.

The debate of title I of the conference report on the FAIR bill in the House and in the Senate is replete with references to “contract,” “guarantee,” “binding contract” and similar references. The Production Flexibility Contract (U.S.D.A.—CCC Form 478) speaks in terms of contract acreage, contract crop, and the ability of CCC representatives to enter onto the producer's farm to determine “compliance with the contract.”

The fact that the production flexibility contracts were intended to carry with them a guarantee of payment barring failure of the producer to comply with certain statutorily express conditions for compliance is clearly illustrated. Given that, it should follow that these production flexibility contracts represent vested legal rights in owners or producers that could be altered by subsequent enactment, except that those legal rights could be enforceable against the Government for damages if for some reason funding were not made available during the 7-year period of the contract contemplated in the AMT Act.

The ruling of the Supreme Court in the case of United States versus Winstar Corp. et al., U.S. , No. 95-865 slip op. (July 1, 1996) should serve as a precedent and should apply in the event there is an amendment to the Agricultural Market Transition Act prior to 2002 that could have the effect of breaching the contractual obligations of the Government to fulfill the provisions of the Production Flexibility Contract.

The Winstar case held that Federal bank regulations that implemented the 1989 Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) (Public Law 101-73, see particularly 12 U.S.C. 1464(t)) imposed new capital requirements on savings and loan associations in derogation of promises made in pre-1989 agreements that allowed financial institutions willing to take over failing institutions to use certain accounting devices to satisfy capital requirements and this constituted a breach of contract for which the Government was liable for damages.

The United States in the Winstar case raised the unmistakability defense to the effect that a public or general sovereign act such as FIRREA's alteration of capital reserve requirements (that reversed the earlier permission of certain savings and loan institutions to use certain accounting devices) could not trigger contractual liability for the Government.

However, the unmistakability defense or doctrine states that “sovereign power, even when unexercised, is an enduring presence that governs all contracts subject to the sovereign's jurisdiction, and will remain intact unless surrendered in unmistakable terms.” Merrion versus Jicarilla Apache Tribe, 455